

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Mark G. CAVANAUGH 273-68-0875

DECISION OF THE COMMANDANT ON APPEAL

2401

Mark G. CAVANAUGH

This appeal has been taken in accordance with 46 CFR 5.30-15.

By order dated 31 January 1985, an Administrative Law Judge of the United States Coast Guard at Alameda, California, revoked Appellant's seaman's document upon finding proved a charge of misconduct and a charge of being a user of a dangerous drug. The specifications supporting these two charges allege that Appellant, while serving under authority of the captioned document on board the SS CONSTITUTION did, on or about 1900 24 February 1984 while said vessel was at sea, wrongfully use cocaine and at the same time and place, being holder of the captioned document, was a user of cocaine.

On 16 April 1985, Appellant filed a notice of appeal and requested a temporary document. The Administrative Law Judge denied the request by order dated 19 April 1985.

BASES OF APPEAL

This appeal has been taken from the denial of a temporary document. Appellant urges the following:

1. He should have been given an opportunity to sail following the Administrative Law Judge's order of revocation to demonstrate that his service aboard a vessel is compatible with safety of life and property at sea;
2. The fact that he sailed without incident for approximately 12 months between the time that he was charged and the time that the Administrative Law Judge's Decision and Order was served on him and the fact that he had no prior record with the Coast Guard demonstrate that he should be given a temporary document.

APPEARANCE: Appellant pro se on this appeal.

OPTION

I

Appellant asserts that he should be given the opportunity to sail and demonstrate that his service aboard a vessel is compatible with safety of life and property at sea so that he can be issued a temporary##** Prev. block could not be parsed for attributes-- Contact Shaffstall Support **#

Appellant's seaman's document has been revoked. precluded by law (46 U.S.C. 8701) from employment or service aboard merchant vessels. While the Administrative Law Judge has authority under 46 C.F.R. 5.30-15 to grant or deny the issuance of a temporary document pending appeal, he is without authority to permit Appellant's employment without a document.

II

Appellant asserts that the fact that he has served without further incident for approximately 12 months between the time he was charged and the time the Administrative Law Judge served the Decision and Order, and that he has no prior record of offenses with the Coast Guard, demonstrates his entitlement to a temporary document. I do not agree.

The issuance of a temporary document is governed by the provisions of 46 CFR 5.30-15, which provides, in pertinent part:

(b) The Administrative Law Judge or the Commandant grants the request for a temporary document based on:

(1) Whether the service of the individual involved on board a vessel at the time of the request or immediately thereafter, is compatible with the requirements for safety of life and property at sea.

(2) The individual's prior record.##** Prev. block could not be parsed for attributes -- Contact Shaffstall Support **# provides satisfactory proof that he is cured. Thus, in the case of a request for a temporary document after revocation for use of a dangerous drug, implicit in any consideration of the compatibility of the individual's service with safety requirements is a determination of whether the

individual has provided this proof subsequent to the hearing. Although the government has the initial burden of proof to show drug use, the requester then has the burden of persuasion to prove cure. Appellant did not provide this proof at the hearing, nor does he provide it now. He merely argues that he has served without further incident since the time he was charged and that he has no prior record.

In deciding whether to issue a temporary document, the Administrative Law Judge must evaluate the circumstances of each individual case. See Appeal Decisions 2318 (STRUDWICK), 2315 (FIFER), and 2311 (STRUDWICK). Here, the Administrative Law Judge considered Appellant's arguments and the circumstances surrounding the case, including the fact that Appellant had not only used cocaine while serving aboard the SS CONSTITUTION but also that he had been involved with a group of several other cocaine users in the crew. The Administrative Law Judge further determined that Appellant had some familiarity with the use of cocaine which tends to establish that the offense in question may not have been an isolated occurrence. He##** Prev. block could not be parsed for attributes -- Contact Shaffstall Support **# temporary document would not be compatible with the requirements for the safety of life and property at sea and that his presence aboard a vessel would threaten the safety of the vessel and the crew. I find this determination to be reasonable and well within the discretion of the Administrative Law Judge, and I will not disturb it.

CONCLUSION

Appellant has not established sufficient cause to disturb the order of the Administrative Law Judge de##** Prev. block could not be parsed for attributes -- Contact Shaffstall Support **#

***** END OF DECISION NO. 2401 *****